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CHALLENGING DIMENSION FOR SEX WORKERS AND THEIR CHILDREN

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I. ABSTRACT

In India sex work existed in our society since ancient times. Earlier when kings used to rule, there was concept of Nagar Vadhu, which meant bride of the city. The most beautiful and talented woman in various dance forms used to get the title. Her position was respected but she was within the reach of rich ones only. During the Mughal era, there were Tawaifs. They were basically the talented women in arts who also escorting the Royals. and There were Devadasi who used to dedicate their life in worship and service of deity and temple. But during British era, they lost their significance and got associated with so called sacred prostitution. There are inscriptions, discoveries, texts as well as believes which clearly shows the existence of prostitution in throughout different parts of the world since ancient times. Even after seventy-five years of independence, this social evil still persists in our society. There are legislations, legal framework and the Hon'ble Court judgments in order to protect the rights and interests of victims of this evil, still the ground level reality is horrifying. Women and children are the victims of prostitution. No one gets into this pit on their own, but it is such swamp that it doesn't let the victims come out. Over years sex wok has become profession. Victims of this evil don't have resources to sustain themselves and sex work is the easiest way out. The objective of this article is to analyse the various challenges faced by such victims.

II. KEYWORDS

Prostitution, profession, society, challenges, women.

III. INTRODUCTION

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Prostitution is a social evil in our Indian society. It is not an unknown phenomenon in our society. It's a leech which is hampering the development of our nation. Children are the future of every society. However, the maximum victims of this social evil are children. Roscoe Pound's theory of social engineering led to the enactment of various legislation and legal enactment for protection of rights and interests of sex workers and their children.

Prostitution is not just an evil in our society, rather it has history of being prevalent throughout the world in different names and form. It had been justified as well in name of sacred prostitution and for procreation of children. In ancient as well as medieval India prostitution was in existence in the name of *Nagar Vadhu, Tawaif, Devadasi,* etc. The Britishers also took steps and enacted various legislation in protection of rights of women who were the victims of various social evils existing in the society.

Prostitution can be termed sexual slavery. For the first time steps were taken in this regard via the adoption of 'Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others' by the United General Assembly in 1950 for the suppression of traffic in women and children for purpose of prostitution. India being signatory to it, the Government of India passed 'Suppression of Immoral Traffic in Women and Girls Act, 1956' commonly known as SITA. In 1986 this Act was amended and 'Immoral Traffic (Prevention) Act, 1986' was passed which is commonly known as ITPA. This legislation was the first steps in independent India for prohibition of human trafficking and criminalizing prostitution.

Besides the legislation various other steps have also been taken the Government for curbing this evil in the society. Prostitution can be said to be one of the consequence or purpose of human trafficking. Human trafficking is another existing evil. It's a global crime and its victims are people of all gender, age group, race. Both prostitution and human trafficking are organized crimes. The people behind these are ones with lots of power and control. It is considered to be the most profitable business. The victim of these offences are mostly the poor and illiterate people in the society. They are exploited by the rich people.

The human lust is the biggest source of evil in our society. Even the Hindu religious texts recognise *kam* as the source of all sin. As per Chapter 3, Verse 37 of the holy Bhagavad Gita:

श्रीभगवानुवाच ।
काम एष क्रोध एष रजोगुणसमुद्भवः ।।
महाशनो महापाप्मा विद्ध्येनमिह वैरिणम् ।।

As per the statement, desire(lust) is the enemy of the whole world because of which the creatures incur all evil. This desire when obstructed in any way turns into anger. So, anger, is also alike with this desire[2].

Many Indian states are suffering due to these offences. Every year highest number of missing complaints of girls are lodged in North-eastern states, West Bengal, Bihar, Jharkhand. There have been very few cases where these girls are been able to rescued. The members of these rackets have very strong control over the system and often they take advantage of the existing loopholes.

It is very rare that women get into sex work voluntarily, these women are those who are victims of human trafficking. A woman is compelled to indulge in sex work not because of bodily pleasure but due to miserable poverty. Poverty is one of the root cause of all the existing social evils in our society. These women are physically, mentally and sexually tortured by their suppliers / traffickers and by the customers too. There are various red-light areas throughout India. Girls of young age are brought and sold here for high prices. Once a girl comes to this area, even if they are rescued, their family denies to accept them. The society ostracises them. As a result, they have no option other than sex work for their survival. There have been many cases reported where even though women and girls were rescued from these areas, still they got involved in sex work as they had no source for survival. Rescue isn't the biggest challenge, rather rehabilitation is the challenge. Often women who are sex workers get impregnated. These women for the survival of their children often choose to stay

[2] Bhagavad Gita, Chapter 3 Verse 37 <https://www.holy-bhagavad-gita.org/chapter/3/verse/37> accessed 6 December, 2024;

in the business. They all lack access to protection and mostly due to unawareness of their rights.

Every individual born in India has the Fundamental Rights enshrined under the Indian Constitution. There is no discrimination, irrespective of the place of birth or the way that led to their birth. Sex workers and their children are often infected with HIV or sexually transmitted diseases or sexually transmitted infection due to the unprotected intercourse. They are unaware about their legal rights, health rights, etc. Their children are often discriminated. For a long time, sex workers and their children had no access to identification card which would help have helped them in availing benefits given by government. Their children were not given admission in schools. They kept their identity discreet. There are various challenges faced by sex workers in India such as they don't have awareness or knowledge about their fundamental and legal rights, rescue and rehabilitation policies.

The National Commission of Women is statutory body of the Government of India which was established in 1992 for providing protection to women and their rights. Women and children are considered to be vulnerable class in the society. Even the Indian Constitution under Article 15 allows for positive discrimination, i.e. special laws can be enacted for their protection.

IV. LINK BETWEEN SEX WORK AND CHILD TRAFFICKING

There is direct and very strong nexus between sex work and child trafficking. This is not just the scenario of India but it's a global issue. The purpose of trafficking in maximum cases is for sex work. The trafficker looks for vulnerable targets such as women and children. Often, they are misled and brought into this work. Numerous cases have been reported where women were lured in name of jobs and they were sold off. Poverty can also be considered to be one root cause of trafficking and sex work existing in India. Poor people are forced to sell their children for small amount of money. The rackets of these traffickers are wide spread through out the nation. There are eight to nine states where more than hundred plus missing complaint cases have been reported of women and children. These women and children are either sent for forced child labour or prostitution. There are very few cases when they have been

able to be rescue, i.e. it can be said that the proportion of rescue is very low in comparison to the reported cases. Girls of tender age are also misrepresented by boys or men into love and in name of eloping these people sell the girls in red light areas.

Sex trafficking is not just limited to Indian scenario rather it is a global issue[3]. There is sale and purchase of small girls for such purposes throughout the world and specially from economically weak nations. There are few countries where sex work has been made legal or is allowed by the state in order to protect the rights of such women in the profession.

As per the National Crime Records Bureau Report 2022 titled "*Crime in India for 2022*"[4] released in December, by the rate of 4% there has been aggravation from year 2021 of overall crime against women in India. Human trafficking witnessed rise by 2.8% in the country. 1200 cases have been reported of human trafficking[5]. As per the National Crime Records Bureau Report on Human and Child Trafficking in 2020[6], 4079 victims (including male / female below and above the age of eighteen years) have been trafficked, out of which there are 845 girls below the age of eighteen years and 1952 girls who were above the age of eighteen years of age. This report was published on the basis of the annual data provided by the Anti Human trafficking units of all states and union territories in India. As per the report[7], the leading purpose of trafficking is sexual exploitation of prostitution.

The report is only about the reported cases, but there are places in India where people still does not report case out of societal taboo. If we include the unreported cases too, then the figure will be larger for sure.

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[3] <https://www.unodc.org/unodc/data-and-analysis/glotip.html> accessed 6 January 2024;
[4] National Crime Records Bureau Report 2022, "Crime in India 2022" <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf> accessed 6 January 2024;
[5] *Supra,* Table 1.2, p 35;
[6] National Crime Records Bureau, Human Trafficking and Child Trafficking, Victims Trafficked - 2020 <https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2014.2_7.pdf> accessed 6 January 2024;
[7] National Crime Records Bureau, Human Trafficking and Child Trafficking, Purpose of Human Trafficking – 2020<https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2014.5_3.pdf> accessed 6 January 2024;

The various statutory bodies of the Government of India like National Human Rights Commission, National Commission of Women, National Commission for Protection of Child Rights and their state commissions have made efforts in order to combat this evil in the society. This has to be eradicated from the root in order curb it. This evil has spread like termite in our society which is ultimately hampering the development of our nation.

No one enters into sex work willing; they are either forced or lured which ultimately led them to this swamp. The children of sex workers especially girl child are also forced into this work.

Our Indian legal system through various legislative enactments have penalised human trafficking for the purpose of sexual exploitation. Section 370 of the Indian Penal Code, 1860[8] criminalizes trafficking offences. Section 370A[9] which was added by the Criminal Amendment Act, 2013 penalises exploitation (including sexual exploitation) of a trafficked person. Section 372[10] and 373[11] of the Indian Penal Code, 1860 penalises buying and selling of minor for the purpose of prostitution, etc. Section 98[12] and 99[13] of the Bharatiya Nyaya Sanhita, 2023 provide its corresponding provisions. Protection of Children from Sexual Offences Act, 2012, Juvenile Justice (Care and Protection of Children) Act, 2015 also have provisions for criminalizing various offences related to sexual exploitation of children. Under the Immoral Traffic (Prevention) Act, 1986 acts related to prostitution becomes an offence when a person is exploited commercially. This has been termed as Commercial Sexual Exploitation, commonly known as CSE. The Act penalizes even attempt to traffic a person. This person may be a male, female or transgender of age group. The laws in itself combine unlawful, reformatory, administrative and deterrent provisions.

Dr. P M Nair, IPS (Retd.) under the Government of India is known as the father of Anti – Human Trafficking Movement in India for his dedicated work and impact he

[8] Indian Penal Code 1860, S 370;
[9] Indian Penal Code 1860, S 370A;
[10] Indian Penal Code 1860, S 372;
[11] Indian Penal Code 1860, S 373;
[12] Bharatiya Nyaya Sanhita 2023, S 98;
[13] Bharatiya Nyaya Sanhita 2023, S 99;

made in four decades in this field. In his recent work[14], Dr. Nair mentions that Commercial Sexual Exploitation is one of the end results of trafficking. He has described trafficking as the process and commercial sexual exploitation as one of its outcomes. The demand in Commercial Sexual Exploitation has produced, originated, endorsed and spread human trafficking especially of women and children. For the offence of trafficking, consent is irrelevant, irrespective of victim's age. A woman irrespective of her age, if she is trafficked for the purpose of commercial sexual exploitation is victim of trafficking and not an accused. She is not a 'prostitute' but a prostituted woman.

Such women victims often become pregnant as they are subject to unprotected sex. This unprotected sex makes these women and their children highly vulnerable to HIV / AIDS or sexually transmitted disease, sexually transmitted infections, etc.

Human trafficking is an organized, continuing offence. It doesn't end till the victim is rescued and given proper care. Mere rescue is not sufficient, rehabilitation of such victims is required. Often when women are rescued from sex work, out of compulsion they get back into the work as they have no source of income. HLA Hart in his legal theory propounded that, survival is the prime concern of any society. If society is not to become a suicide bomb, then it has to have a basic minimum content of morality. Society and law have to be interconnected. Law can't be studied in isolation it has to be studied with society. These women in order for their survival and their children (if any) has no option other than sex work. In order to avoid such situation, they must be trained with some technical skills such as stitching, etc. so that they can find job for their survival. The rescued woman should be given vocational training and made economically self-independent so that they don't have to sell their body for survival. They also must be provided shelter. Our societal dogma makes it hard for the rescued woman to live among people. Even the families of these victims refuse to accept them back. These women are subject to abuses, taunts, harassment by their own kin. In

[14] P M Nair, *Investigating Sex Trafficking: A Handbook* (Published by Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, January 2020) p 3, 4;

order to avoid such trauma most women continue to remain in sex work for their survival.

Article 23[15] of the Indian Constitution prohibits human trafficking. Every individual irrespective of their religion, caste, creed, gender is entitled to the Fundamental Rights enshrined under the Indian Constitution, 1950. India is a welfare state, i.e. welfare of the people of the India is the utmost priority of the country.

Pallabi Ghosh, who is an anti – trafficking activist has rescued hundreds of women and young girls. In a podcast interview on a YouTube channel Real Hit[16], she disclosed how and under what situations she had and is continuing to rescue the women and girls from the red-light areas. These women are also trafficked for the purpose of forced marriage. In Haryana where the sex ratio was very poor until past few years was the destination place of these trafficked victims. Few groups of people in the northern part of India have culture of having their eldest daughter doing sex work. These kinds of inhumane customs are still practiced till date. West Bengal and Assam has become the hub for these traffickers to get girls to supply throughout India and even send them to foreign countries. There are numerous existing red lights areas in India such as Kamathipua in Mumbai, Sonagachi in Kolkata, G B Road in Delhi, Chaturbhujsthan in Muzaffarpur, etc. Red light area means an area of a town or city which has many brothels, strip clubs and where various other sex businesses are conducted.

Post Covid-19 has worsened this situation. Due to loss of jobs and resources women and children were forced into prostitution for survival of the family. For few amounts of money, they are being sold by their own kins.

Section 3[17] of the Immoral Traffic (Prevention) Act, 1986 penalizes for keeping of a brothel or allowing any premises to be used as brothel. Section 2 (a)[18] of the Act defines brothel as a place which is used for sexual exploitation or abuse of one person and for

[15] The Constitution of India 1950, Article 23;
[16] RealHit, 'G B Road aur India k Top Red Areas Mei Ye Hota Hai Ft. Pallabi Ghosh' (RealTalk S 02 Episode 25 28 May 2023) <https://www.youtube.com/watch?v=wOUsyy3kNIE> accessed on 7 January 2024;
[17] Immoral Traffic (Prevention) Act 1986, S 3;
[18] Immoral Traffic (Prevention) Act 1986, S 2 (a);

gain of another person or for mutual gain of two or more prostitutes. A woman engaging in sexual exploitation or abuse for commercial purpose is said to be a prostitute.

V. CHALLENGES FACED BY SEX WORKERS IN INDIA

Prostitution is not per se illegal in India, but its various other dimensions are illegal in India such as child prostitution, keeping brothel, etc. The Immoral Traffic (Prevention) Act, 1986 regulates sex work in India. There is world's one of the largest commercial sex industries in India. As per the various legislation sex workers are termed Commercial Sex Workers. There are various socio-economic challenges faced by them such as insufficient income, lack of alternative livelihood, violence from clients, etc. The work also affects their as well as their children mental well-being.

Indian society has lot of influence of religion, moral, culture, ethics, etc. In such society prostitution is considered as demeaning and degrading work. Sex workers were seen as low esteemed people with no dignity and integrity. They are often treated as commodity by the people and not as human being. Every individual has right to life with dignity under Article 21[19] of the Indian Constitution. It's a fundamental right which is even available to sex workers.

The Hon'ble Supreme Court through its various judgments have brought major reforms and took actions in order to protect the right of sex workers. Out of the various challenges faced by sex workers is the legal challenge. They are unaware of their fundamental and legal rights. It is not their fault but efforts must be made by the state in order to make them aware of their rights. No one can be treated inhumanly. Every person born with their human rights. These rights are basic rights which is acquired by an individual by birth itself and continues throughout. There are various legislations passed by the Indian Parliament in light of protection of human rights. These legislations were enacted considering the international conventions signed by India. The Indian Constitution is considered to be the Grundnorm of our legal framework. The Drafting Committee drafted it keeping in line with the principles of

[19] The Constitution of India 1950, Article 21;

natural justice, laws on human rights, etc. Human Rights jurisprudence has acquired constitutional status in India through the Golden Triangle of the Indian Constitution.

Hans Kelsen, the jurist of Analytical School of Law propounded the concept to Pure Theory of Law. He believed law should be studied 'as it is', i.e. it should be free from moral perspective, political perspective or philosophical ideologies existing in the society. He gave the concept of Grundnorm, which is the ultimate norm or principle that exist in the society. Its derogation is not possible.

The Basic Structure is the Grundnorm of the Indian Constitution. Principle of natural justice, principle of reasonableness, principle of good conscience, principle of non-arbitrariness, principle of equality, right to life including dignified life, principle of equity and justice, principle of accountability, etc. can't be defied under any circumstances. Our Constitution is a pulsating document. It grows and evolves with society.

Law can't be read or made in isolation. Law should grow and adapt itself with the society. Society is dynamic so law can't remain static. As per the needs or requirements law must be enacted or amended accordingly. The various legislations that have been enacted by the Parliament for protection of rights and interests of sex workers have also been made keeping in mind these principles.

If the offence is committed against a person who to the category of schedule caste or schedule tribe or the person is disabled, then the accused will also be liable under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 or the Rights of Person with Disabilities Act, 2016 will also apply.

In the landmark judgment of *Budhadev Karmaskar v. State of West Bengal*[20], the Divisional Bench of Hon'ble Apex Court held that even sex workers are entitled to Right to life and personal liberty under Article 21 of the Indian Constitution. Right to life has to be a dignified life and it can't be mere animal existence. This case paved the path for protection of rights and interest of sex workers. A sex worker was sleeping in front of her room in the red-light area when the accused came and assaulted her so

[20] *Budhadev Karmaskar v State of West Bengal* [2011] 10 SCR 577;

badly that it caused her death. The Hon'ble Court in its order quoted Chakle by Sahir Ludhianvi[21]. The court also laid emphasis upon the rehabilitation of the rescued sex workers and the steps to be taken so that they are not compelled due to their circumstances to get back into sex trade for their survival. These rescued women can be trained for working as mobile creches, petrol pump fillers, catering and hospitality service, beauty care, fashion designing, food courts.

The women while working here will have a dignified and integrous life. Flesh trade make them hallow from inside. It also affects their mental health as well. These women have to suffer from immense trauma. They are subject to violence as well.

In the case of *Nipun Saxena v. Union of India*[22], the Hon'ble Court had held that victim of sexual offences has right to protection of identity.

Protection of identity becomes very important for the victims of sex trade. This identification protection also extends to the children of sex workers due to the social stigma prevailing in our society. Sex workers and their children are seen with disgrace in our society. They are ostracized, subject to abusive slurs and violence of people. The children of sex workers are also entitled to fundamental rights enshrined under the Indian Constitution. They too have equal rights and opportunities like other children. They are also the future of our nation.

Earlier there had been many cases where children of sex workers were not given admission in schools due to various reasons. Father's name was mandatory and often on this ground admission was denied. Article 21A[23] which provides for Right to Education was interested in the Indian Constitution through the Eighty Sixth Constitutional Amendment Act, 2002. The state is obliged to provide free and compulsory education to all children in the age group of six to fourteen years as matter of their fundamental right. The Right of Children to Free and Compulsory Education Act, 2009 was enacted in light of Article 21A of the Indian Constitution. The Act come

[21] <https://main.sci.gov.in/pdf/SupremeCourtReport/2011_v10_piii.pdf> p 2, accessed on 8 January 2024.
[22] *Nipun Saxena v Union of India* WP(C) no.565 of 2012, [2019] 2 SCC 703;
[23] The Constitution of India 1950, Article 21A;

into force in 2010. Under the Act, the children of sex workers are also entitled to education.

Often children of sex workers stop from going to school as their identification as child of sex worker is revealed. The peer pressure and the mental trauma they suffer is beyond imagination. Steps must be taken to protect their identity. Education is the tool which will help in ultimately eradicating all the existing social evils from the society.

These sex workers are their children are the victim of human trafficking, sexual exploitation and abuse. They don't even have access to the basic legal, education, health and occupational rights. They lack awareness of their own rights. Children are vulnerable and their future should be shaped in harmony.

In the case of *Gaurav Jain v. Union of India and Others*[24], the Hon'ble Apex Court held that even children of sex workers are entitled to equal opportunities and rights to care and protection.

Offences against women can't be justified by labelling women as of immoral or loose character. Every individual has right to dignified life irrespective of their character or profession. Even sex workers have the right to deny for sexual intercourse. It is their legal right. The Hon'ble Supreme Court in the case of *State Govt. NCT Delhi v. Pankaj Chaudhary & Ors.*[25] held that the mere fact that the woman is a sex worker does give accused to commit rape upon her against her consent. The two female Judges bench in this case has reversed the order passed by Delhi High Court where they had acquitted the accused for gang raping the victim.

During the Covid-19 period, the situation of sex workers worsened. The Supreme Court took suo moto cognizance[26] and passed order to issue ration card and voter ID cards to sex workers so that they can avail the benefit of free ration provided by the Government. Article 21 of the Indian Constitution includes Right to Food as fundamental right. Sex workers as well as their children are entitled to basic human

[24] *Gaurav Jain v Union of India and Others* [1997] 8 SCC 114;
[25] *State Govt. NCT Delhi v Pankaj Chaudhary & Ors.* [Criminal Appeal No. 2299 of 2009];
[26] *Budhadev Karmaskar v State of West Bengal* [2022] SCC OnLine SC 704.

decency and protection provided by the state. The court recognised sex work as a profession provided it is done voluntarily and there is no violation or exploitation of any individual's right or body. Panel was constituted to study for steps to be taken to prevent trafficking as sex work is one of the purpose of trafficking, rehabilitation of sex workers who wish to leave the flesh trade and measures to be taken to ensure that the sex workers can have a dignified life as per Article 21 of the Indian Constitution. The Court also sought from Centre on the update of The Sex Workers (Rehabilitation And Social Security) Bill, 2015 which hasn't been passed yet the legislature. The Bill provided for right to equality, right to non-discrimination, rehabilitation, quality health care, access to justice, skill development, vocational training for sex workers, financial security to them, education for sex workers and their children. Passing of this Bill play a very important role in filling the existing loopholes in the system for protection of sex workers and their children.

VI. CONCLUSION

The morality of our society is degrading day by day. The introduction of technology can be said to be one factor for the cause. It is very important for the legislature to pass the pending Bill proposed in 2015 for rehabilitation and security of sex workers. Moreover, mere steps taken by the Government or Court is not enough to implement the guidelines and laws made for protection of victims of this swamp of trafficked women and children in our society. The civil society organizations, NGOs along with common people have to come forward to take steps. We have to accept and respect them as members of our society. This is important for the journey of India from developing nation to developed nation.

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